



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/764,862

01/26/2004

Hideyuki Seto

17400

9396

23389 7590 01/25/2007
SCULLY SCOTT MURPHY & PRESSER, PC
400 GARDEN CITY PLAZA
SUITE 300
GARDEN CITY, NY 11530

EXAMINER

CATTUNGAL, SANJAY

ART UNIT

PAPER NUMBER

3768

MAIL DATE

DELIVERY MODE

01/25/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

58

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/764,862	Applicant(s) SETO ET AL.	
	Examiner Sanjay Cattungal	Art Unit 3768	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 06 December 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: _____.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

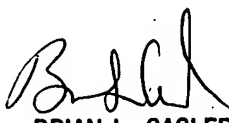
11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

In relation to claims 1, 3, 4, and 7, it is noted for the record that a recitation with respect to the manner in which an apparatus is intended to be employed does not impose any structural limitation upon the claimed apparatus which differentiates it from a prior art reference disclosing the structural limitations of the claims. In re Pearson, 494 F. 2d 1399, 181 USPQ 641 (CCPA 1974); In re Casey, 370 F. 2d 576, 152 USPQ 235 (CCPA 1967). Accordingly, since claims 1, 3, 4 and 7 are an apparatus claim, and not a method claim, the intended uses disclosed by the applicant do not provide the necessary patentable weight to overcome the pending rejection. In Claim 1, A plate frame provide "for suppressing deformation" is functional language and carries no patentable weight.

The Otsuka reference teaches the use of a "plate springs" which can only be deformed in the perpendicular direction and forces in other directions can not deform the plate. Hence the plate meets the structural limitations of the claim 1. Moreover, "suppresing dformation" is a functional limitation which carries no patentable weight as explained earlier.

Applicant argues that the Otsuka reference does not have a filing date that is earlier than the priority date of the present application. It must be noted that Applicant needs to "perfect" the priority to claim priority back to the Japanese filing date. Should applicant desire to obtain the benefit of foreign priority under 35 U.S.C. 119(a)-(d), a certified English translation of the foreign application must be submitted in reply to this action. 37 CFR 41.154(b) and 41.202(e). Failure to provide a certified translation may result in no benefit being accorded for the non-English application, and hence the Otsuka reference rejection still holds.

Applicant argues that the "plate frame structure" provided in the Otsuka reference does not have a notch. It should be noted that the in the Otsuka reference Fig. 11 element 62, which is the plate frame is attached to element 41 and 55 and that is only possible through some sort of structure which holds them together and that structure by definition is a notch.


BRIAN L. CASLER
SUPERVISORY PATENT EXAMINER
ARTS/ENGINEERING 3700